

HENRY MESA JR. #1492559 §
v. § CIVIL ACTION NO. 9:12cv42
DR. KASULE, ET AL. §

The Plaintiff Henry Mesa Jr., proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, testimony, and records, the Magistrate Judge determined that Mesa had not shown that he had been subjected to deliberate indifference to his serious medical needs. Accordingly, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted. Mesa filed objections to the Report on May 8, 2013.

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doctrine. In other words, Mesa says, he should be allowed to reopen the case if his condition worsens because the defendants did not take action when he first presented his symptoms. Mesa goes on to say that most prisoners with hernia problems are treated with trusses, but that his hernia is so large that it cannot be reduced by an abdominal binder.

Mesa's arguments offer no basis upon which to reject the Report of the Magistrate Judge. The evidence and testimony in this case did not show that the Defendants acted with deliberate indifference to his serious medical needs, meaning that a dismissal with prejudice of the claims presented in this lawsuit is warranted. *See Marts v. Hines*, 117 F.3d 1504, 1506 (5th Cir. 1997). Mesa's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings, testimony, and evidence in this cause, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 31) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted. 28 U.S.C. §1915A(b). It is further

ORDERED that a copy of this opinion shall be sent to the Administrator of the Strikes List for the Eastern District of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **15** day of **May, 2013**.



Ron Clark, United States District Judge